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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TERESA M. RUIZ, )  
Plaintiff, ) No. CV-05-3009-CI  
v. ) ORDER GRANTING IN PART  
JO ANNE B. BARNHART, ) PLAINTIFF'S MOTION FOR SUMMARY  
Commissioner of Social ) JUDGMENT AND REMANDING FOR  
Security, ) ADDITIONAL PROCEEDINGS  
Defendant. ) PURSUANT TO SENTENCE FOUR OF  
 ) 42 U.S.C. § 405(G)  
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BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 12, 16), submitted for disposition without oral argument on September 6, 2005.<sup>1</sup> Attorney D. James Tree represents Plaintiff; Special Assistant United States Attorney David R. Johnson represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment and **REMANDS** for additional proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

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<sup>1</sup>The court has addressed the matter prior to the formal hearing date because the briefing was complete.

1 Plaintiff, who was 43-years-old at the time of the second  
2 administrative decision, filed an application for Supplemental  
3 Security Income (SSI) benefits on August 21, 2000, alleging onset as  
4 of January 1, 1995, due to panic attacks, anxiety, psychosis,  
5 depression and hepatitis C.<sup>2</sup> (Tr. at 21.) Plaintiff completed the  
6 ninth grade and had no past work history. (Tr. at 21.) Following  
7 a denial of benefits and reconsideration, a hearing was held before  
8 ALJ Verrell Dethloff, who concluded Plaintiff, who was not  
9 represented by counsel, could perform the full universe of unskilled  
10 work. (Tr. at 370.) The ALJ denied benefits; the Appeals Council  
11 remanded for consideration of the testimony of a vocational expert.  
12 Following a second administrative hearing, ALJ John Bauer concluded  
13 Plaintiff, still appearing without counsel, could perform work as a  
14 janitor. (Tr. at 26.) Review was denied by the Appeals Council and  
15 this appeal followed. Jurisdiction is appropriate pursuant to 42  
16 U.S.C. § 405(g).

17 **ADMINISTRATIVE DECISION**

18 The ALJ found Plaintiff had not engaged in substantial gainful  
19 activity during the time at issue. He also found she had severe  
20 mental impairments, including cocaine dependence in one year  
21 remission, substance induced dementia, substance induced depression,  
22 hearing loss and history of eye surgery, but those impairments did  
23 not meet the Listings. (Tr. at 23.) Substance abuse was no longer  
24 found to be a material factor in the disability determination. The

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25 <sup>2</sup>Plaintiff filed an earlier application for SSI benefits on  
26 October 16, 1998; that application was denied and no appeal was  
27 taken. (Tr. at 60.)

1 ALJ found Plaintiff's allegations of disability were not fully  
 2 credible. He concluded her residual capacity permitted her to  
 3 perform the full range of exertional work with additional non-  
 4 exertional limitations. (Tr. at 23.) The ALJ also concluded, based  
 5 on the testimony of the vocational expert, Plaintiff could work as  
 6 a janitor / cleaner. Thus, the ALJ found Plaintiff was not  
 7 disabled.

#### 8                   **ISSUES**

9                 The question presented is whether there was substantial  
 10 evidence to support the ALJ's decision denying benefits and, if so,  
 11 whether that decision was based on proper legal standards. Plaintiff  
 12 asserts the ALJ erred when he (1) improperly analyzed the drug and  
 13 alcohol use, (2) improperly rejected the opinions of Plaintiff's  
 14 treating and examining physicians, and (3) erroneously found  
 15 Plaintiff able to work at step five.

#### 16                   **STANDARD OF REVIEW**

17                 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
 18 court set out the standard of review:

19                 The decision of the Commissioner may be reversed only if  
 20 it is not supported by substantial evidence or if it is  
 21 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,  
 22 1097 (9th Cir. 1999). Substantial evidence is defined as  
 23 being more than a mere scintilla, but less than a  
 24 preponderance. *Id.* at 1098. Put another way, substantial  
 25 evidence is such relevant evidence as a reasonable mind  
 26 might accept as adequate to support a conclusion.  
*Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the  
 27 evidence is susceptible to more than one rational  
 28 interpretation, the court may not substitute its judgment  
*Morgan v. Comm'r of Soc. Sec. Admin.* 169 F.3d 595, 599  
 (9th Cir. 1999).

26                 The ALJ is responsible for determining credibility,  
 27 resolving conflicts in medical testimony, and resolving  
 28 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th

1 Cir. 1995). The ALJ's determinations of law are reviewed  
 2 *de novo*, although deference is owed to a reasonable  
 3 construction of the applicable statutes. *McNatt v. Apfel*,  
 4 201 F.3d 1084, 1087 (9th Cir. 2000).

5 **SEQUENTIAL PROCESS**

6 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
 7 requirements necessary to establish disability:

8 Under the Social Security Act, individuals who are  
 9 "under a disability" are eligible to receive benefits. 42  
 10 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
 11 medically determinable physical or mental impairment"  
 12 which prevents one from engaging "in any substantial  
 13 gainful activity" and is expected to result in death or  
 14 last "for a continuous period of not less than 12 months."  
 15 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
 16 from "anatomical, physiological, or psychological  
 17 abnormalities which are demonstrable by medically  
 18 acceptable clinical and laboratory diagnostic techniques."  
 19 42 U.S.C. § 423(d)(3). The Act also provides that a  
 20 claimant will be eligible for benefits only if his  
 21 impairments "are of such severity that he is not only  
 22 unable to do his previous work but cannot, considering his  
 23 age, education and work experience, engage in any other  
 24 kind of substantial gainful work which exists in the  
 25 national economy . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
 26 the definition of disability consists of both medical and  
 27 vocational components.

28 In evaluating whether a claimant suffers from a  
 1 disability, an ALJ must apply a five-step sequential  
 2 inquiry addressing both components of the definition,  
 3 until a question is answered affirmatively or negatively  
 4 in such a way that an ultimate determination can be made.  
 5 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
 6 claimant bears the burden of proving that [s]he is  
 7 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
 8 1999). This requires the presentation of "complete and  
 9 detailed objective medical reports of h[is] condition from  
 10 licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
 11 404.1512(a)-(b), 404.1513(d)).

12 **DRUG AND ALCOHOL EVALUATION**

13 Plaintiff contends the ALJ improperly conducted an analysis of  
 14 the drug and alcohol evidence, noting the ALJ cited the initial  
 15 administrative ruling which concluded substance addiction was  
 16 material (Tr. at 22) and then found, because Plaintiff was in  
 17

18 ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
 19 REMANDING FOR ADDITIONAL PROCEEDINGS PURSUANT TO SENTENCE FOUR OF 42  
 20 U.S.C. § 405(G) - 4

1 remission, her substance issues were no longer material. (Tr. at  
2 23.) However, Plaintiff argues she continues to suffer the long  
3 term psychiatric effects of her drug use (since age 12), including  
4 those impairments diagnosed by Dr. Lee after one year of sobriety.  
5 Plaintiff also contends the functional limitations arising from  
6 those mental impairments, as recognized by Dr. Beaty, were not  
7 included in the hypothetical presented to the vocational expert.  
8 Defendant responds the ALJ correctly relied on the opinions of  
9 consultant Hugh Murray, M.D. who noted on November 6, 2000, that  
10 Plaintiff's mental state could not be "teased apart" from her drug  
11 and alcohol abuse (Tr. at 306)<sup>3</sup> and Ed Beaty, Ph.D.

12 The ALJ made the following findings on this issue after review  
13 of Dr. Lee's diagnosis:

14 The additional medical evidence does not substantially  
15 affect the previous decision. The claimant is apparently  
16 sober, although there are no urinalysis results in the  
17 record. She is still having problems keeping appointments.  
18 She has apparently improved with therapy. The previous  
decision found that substance addiction was material to  
the finding of disability. Currently, there is no  
evidence that the claimant is still using, so substance  
dependence is no longer material, but she has medically

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20       <sup>3</sup>This evidence is not persuasive; Dr. Murray noted "DA&A cannot  
21 be relevant since etiology cannot be teased apart and in any case  
22 significant p.d. [personality disorder] is core condition here  
23 regardless of abstinence." (Tr. at 306.) Dr. Murray concluded  
24 Plaintiff would have mild restrictions of daily living, moderate  
25 difficulties in maintaining social functioning, moderate  
26 difficulties in maintaining concentration, persistence or pace, and  
27 insufficient evidence of repeated episodes of decompensation. (Tr.  
28 at 302.)

1 improved with sobriety as was opined in the previous  
2 decision...

3 The medical evidence indicates that the claimant has  
4 cocaine dependence, in one year remission, substance  
induced dementia, substance induced depression, hearing  
loss, and a history of eye surgery, impairments that are  
"severe" with the meaning of the Regulations...

5 ...Without considering her drug addiction, she is capable  
6 of carrying out one and two step instructions, and can  
7 perform repetitive tasks at a moderate pace in a  
structured, predictable setting, in work not requiring  
more than superficial interaction with the general public.

8 (Tr. at 22, 23.) It appears the ALJ's diagnostic findings are based  
9 on Dr. Jay M. Toews' assessment dated May 4, 2001. (Tr. at 315.)  
10 Dr. Toews diagnosed cocaine dependence, episodic; substance induced  
11 dementia; substance induced depression - severe; substance induced  
12 anxiety; rule out withdrawal symptoms; PTSD by history; personality  
13 disorder nos, antisocial, borderline, histrionic and narcissistic.  
14 Plaintiff had been last treated for substance abuse in February 2001  
15 but had checked herself out of the program and reportedly had last  
16 used cocaine in February or March 2001. (Tr. at 316.) Dr. Toews  
17 further noted: "One cannot be confident that Teresa is not using  
18 drugs...[on a] regular basis. She will probably need to be  
19 involuntarily detained for a period of time for successful treatment  
20 of substance abuse." (Tr. at 317.)

21 Based on this evaluation, Dr. Beaty concluded, in the absence  
22 of substance abuse, Plaintiff would be moderately limited in  
23 understanding and remembering detailed instructions, carrying out  
24 detailed instructions, maintaining attention and concentration;  
25 performing activities within a schedule; completing a normal workday  
26 and week without interruption from psychologically based symptoms;  
27 interacting appropriately with the general public, responding

28 ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL PROCEEDINGS PURSUANT TO SENTENCE FOUR OF 42  
U.S.C. § 405(G) - 6

1 appropriately to changes in the work setting and setting realistic  
2 goals or making plans independently of others. (Tr. at 318, 319.)<sup>4</sup>  
3 Dr. Beaty also found Plaintiff, again in the absence of  
4 polysubstance abuse, could carry out one and two step instructions,  
5 perform repetitive tasks at a moderate pace, would have difficulty  
6 adopting to changes in the workplace, and would require structure  
7 and supportive supervision. Finally, Dr. Beaty concluded Plaintiff  
8 would work best with limited superficial interaction with the  
9 general public. (Tr. at 319.) These functional limitations, as  
10 stated in the positive, were adopted by the ALJ. (Tr. at 25.) Based  
11 on the limitations, the vocational expert concluded Plaintiff could  
12 work as a janitor / cleaner. (Tr. at 499.)

13 The ALJ did not discuss Dr. Lee's conclusions (Tr. at 463)

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14         <sup>4</sup>Plaintiff submitted evidence to the Appeals Council from a  
15 non-testifying vocational expert that limitations as to the ability  
16 to understand, remember and carry out simple instructions would  
17 preclude gainful employment. (Tr. at 468.) However, those  
18 limitations are not included in Dr. Beaty's assessment. (Tr. at  
19 318.) Additionally, the expert noted moderate limitation in ability  
20 to make simple work related decisions would preclude employment; but  
21 Dr. Beaty assessed only a mild limitation in this area. (Tr. at  
22 318.) Moderate limitations in numbers seven and 11, as noted by Dr.  
23 Beaty (Tr. at 318, 319), would preclude gainful employment except  
24 for a sheltered work environment. (Tr. at 469.) Finally, the  
25 expert noted five moderate limitations in any of the areas would  
26 preclude employment. (Tr. at 469.) Plaintiff was found to be  
27 moderately limited in eight areas. (Tr. at 318, 319.)

1 except to dismiss them with the general statement "The additional  
2 medical evidence does not substantially affect the previous  
3 decision." (Tr. at 22.) However, the previous decision was  
4 completed prior to Plaintiff's year of sobriety. Here, the ALJ  
5 found substance abuse was not a material factor in his disability  
6 determination. (Tr. at 23.) Thus, it was internally inconsistent  
7 to rely on an examination conducted during a period of abuse and one  
8 which produced diagnoses which were "substance induced."

9 Dr. Lee's examination occurred about one year into sustained  
10 sobriety. He affirmed diagnoses of bipolar disorder, polysubstance  
11 abuse in remission, and PTSD. (Tr. at 463.) He noted Plaintiff was  
12 attending two AA meetings per week as well as outpatient treatment  
13 and additional meetings during the week with a sponsor. Medications  
14 included Lexapro (for depression and generalized anxiety disorder),  
15 Neurontin (for anxiety), and Seroquel (for sleep). Dr. Lee's  
16 assessment, however, was not supported by independent testing.  
17 Moreover, the ALJ did not consider the limitations suggested by the  
18 outpatient services or side effects of the medications.

19 Plaintiff was not represented by counsel at either  
20 administrative hearing. There are questions that remain regarding  
21 Plaintiff's mental status post sobriety. "[T]he ALJ has a duty to  
22 assist in developing the record." *Armstrong v. Commissioner of Soc.*  
23 *Sec. Admin.*, 160 F.3d 587, 589 (9th Cir. 1998); 20 C.F.R. §§  
24 404.1512(d)-(f); *id.* at §§ 416.912(d)-(f); see also *Sims v. Apfel*,  
25 530 U.S. 103, 110-11 (2000) ("Social Security proceedings are  
26 inquisitorial rather than adversarial. It is the ALJ's duty to  
27 investigate the facts and develop the arguments both for and against

1 granting benefits...."). An ALJ may supplement an inadequate medical  
2 record by ordering a consultative examination, i.e., "a physical or  
3 mental examination or test purchased for [a claimant] at [the Social  
4 Security Administration's] request and expense." 20 C.F.R. §§  
5 404.1519, 416.919. The ALJ's duty to develop the record fully is  
6 heightened when the claimant is unrepresented, may be mentally ill  
7 and thus unable to protect his or her own interests. *Higbee v.*  
8 *Sullivan*, 975 F.2d 558, 562 (9th Cir. 1992). Some kinds of cases  
9 "normally require a consultative examination," including those in  
10 which "additional evidence needed is not contained in the records of  
11 [the claimant's] medical sources," and those involving an "ambiguity  
12 or insufficiency in the evidence [that] must be resolved." §§  
13 404.1519a(b)(1), (4), 416.919a(b)(1), (4). Here, the record  
14 reflects an incomplete mental health record; accordingly,

15 **IT IS ORDERED:**

16 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 12**) is  
17 **GRANTED IN PART**; the matter is **REMANDED** for additional proceedings  
18 pursuant to sentence four of 42 U.S.C. § 405(g), including a  
19 comprehensive mental health examination unless there is evidence  
20 Plaintiff has been unable to sustain her sobriety. If such evidence  
21 is offered and credited, then the current application for benefits  
22 may be **DISMISSED WITH PREJUDICE** without additional administrative  
23 proceedings. Any award of benefits would also be dependent upon  
24 amendment of the onset date.

25 2. Defendant's Motion for Summary Judgment dismissal (**Ct. Rec.**  
26 **16**) is **DENIED**.

27 3. The District Court Executive is directed to file this Order  
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ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL PROCEEDINGS PURSUANT TO SENTENCE FOUR OF 42  
U.S.C. § 405(G) - 9

1 and provide a copy to counsel for Plaintiff and Defendant. The file  
2 shall be **CLOSED** and judgment entered for Plaintiff.

3 DATED August 30, 2005.

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6 s/ CYNTHIA IMBROGNO  
7 UNITED STATES MAGISTRATE JUDGE

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ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL PROCEEDINGS PURSUANT TO SENTENCE FOUR OF 42  
U.S.C. § 405(G) - 10